

Remarks

Claims 33-36 were cancelled in the Notice of Allowance of October 20, 2008, pursuant to an Examiner's amendment. Applicant respectfully submits that cancellation of these claims was improper and accordingly, requests withdrawal of the cancellation.

M.P.E.P. § 809 states in part

... When all claims directed to the elected invention are allowable, should any linking claim be allowable, the restriction requirement between the linked inventions must be withdrawn. Any claim(s) directed to the nonelected invention(s), previously withdrawn from consideration, which depends from or requires all the limitations of the allowable linking claim must be rejoined and will be fully examined for patentability. ...

(See also M.P.E.P. § 821.04, which provides that "the propriety of a restriction requirement should be reconsidered when all the claims directed to the elected invention are in condition for allowance, and the nonelected invention(s) should be considered for rejoinder." This section further provides that "in order to be eligible for rejoinder, a claim to a nonelected invention must depend from or otherwise require all the limitations of an allowable claim.")

In the current application, claims 33-36 were withdrawn from further consideration as being drawn to a nonelected species. See Office Action of October 17, 2007. Allowed claims 30 and 32 are directed to Applicant's election. See Applicant's response dated July 19, 2008 to restriction requirement in Office Action dated June 19, 2007. Claims 33-36 depend from the allowed claims, and thus, claim 33-36 require all of the limitations of the allowed claims. Accordingly, Applicant respectfully submits that the restriction requirement between the elected species and the nonelected species should have been withdrawn and that claims 33-36 should be allowable over the prior for at least the same reasons that claims 30 and 32 are allowable over the prior art.

Thus, Applicant requests withdrawal of the Examiner's amendment, which canceled claims 33-36, and Applicant requests that claims 33-36 be allowed.

Applicant's undersigned representative requests that the Examiner contact him at (617) 443-9292 to expedite the resolution of any remaining questions or concerns, particularly regarding entry of the requested amendment.

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Respectfully submitted,

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